

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ELVIS WELLS,

Case No. 2:19-cv-00522-APG-VCF

Petitioner,

ORDER

BRIAN WILLIAMS, et al.,

Respondents.

9 Petitioner Elvis Wells filed an application for leave to proceed *in forma pauperis*. ECF No.
10 1. I find that Wells cannot pay the filing fee. The application for leave to proceed *in forma*
11 *pauperis* will therefore be granted, and Wells will not be required to pay the \$5 filing fee.

12 I also conduct an initial review under Rule 4 of the Rules Governing Section 2254 Cases
13 in the United States District Courts. I will direct service and a response.

14 It is therefore ordered that Wells's application for leave to proceed *in forma pauperis* (**ECF**
15 **No. 1**) is granted. Wells will not be required to pay the filing fee.

16 It is further ordered that the Clerk of the Court shall file the petition (ECF No. 1-1).

17 It is further ordered that the Clerk shall add Aaron D. Ford as attorney for the respondents
18 and shall informally electronically serve the Nevada Attorney General with a copy of the petition
19 and this order.

20 It is further ordered that respondents shall have 60 days from entry of this order within
21 which to answer or otherwise respond to the petition. Wells will have 30 days from the filing of
22 an answer to file a reply. The time limits for responding and replying to any motion filed in lieu
23 of an answer will be governed instead by L.R. 7-2(b). Any response filed shall comply with the
24 remaining provisions below.

25 It is further ordered that any procedural defenses raised by the respondents in this case shall
26 be raised together in a single consolidated motion to dismiss. The respondents shall not file a
27 response in this case that consolidates their procedural defenses, if any, with their response on the

1 merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking
2 merit. If the respondents seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
3 do so within the single motion to dismiss not in the answer; and (b) they shall specifically direct
4 their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406
5 F.3d 614, 623-24 (9th Cir. 2005). All procedural defenses, including exhaustion, must be raised
6 by motion to dismiss.

7 It is further ordered that, in any answer filed on the merits, the respondents shall specifically
8 cite to and address the applicable state court written decision and state court record materials, if
9 any, regarding each claim within the response as to that claim.

10 It is further ordered that the respondents shall file a set of state court exhibits relevant to
11 the response filed to the petition, in chronological order and indexed as discussed, *infra*.

12 It is further ordered that all state court record exhibits filed herein shall be filed with a
13 separate index of exhibits identifying the exhibits by number. The CM/ECF attachments that are
14 filed further shall be identified by the number or numbers of the exhibits in the attachment. The
15 purpose of this provision is so that the court and any reviewing court thereafter will be able to
16 quickly determine from the face of the electronic docket sheet which numbered exhibits are filed
17 in which attachments.

18 It is further ordered that counsel additionally shall send a hard copy of all exhibits filed in
19 this case to the Las Vegas Clerk's Office.

20 DATED THIS 2nd day of April, 2019.



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22 ANDREW P. GORDON
23 UNITED STATES DISTRICT JUDGE
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